

SERVED: June 16, 1995

NTSB Order No. EA-4371

UNITED STATES OF AMERICA  
**NATIONAL TRANSPORTATION SAFETY BOARD**  
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 6th day of June, 1995

_____	)	
DAVID R. HINSON,	)	
Administrator,	)	
Federal Aviation Administration,	)	
	)	
Complainant,	)	
	)	Docket SE-13814
v.	)	
	)	
MICHAEL A. BEAUCHEMIN,	)	
	)	
Respondent.	)	
_____	)	

**OPINION AND ORDER**

Respondent has appealed from an order issued by Administrative Law Judge Patrick G. Geraghty on January 13, 1995,<sup>1</sup> which denied respondent's motion for judgment on the pleadings, granted the Administrator's motion for summary judgment, and affirmed an order revoking respondent's pilot certificate pursuant to 14 C.F.R. 61.15(a)(2).<sup>2</sup> The revocation

<sup>1</sup> A copy of the law judge's order is attached.

<sup>2</sup> **§61.15 Offenses involving alcohol or drugs.**

was based on respondent's admitted felony drug conviction, wherein he pled guilty to knowingly engaging in a continuing criminal enterprise of which he was the "organizer, supervisor, or manager," and through which he imported and distributed some 24,000 pounds of marijuana for economic gain, in violation of 21 U.S.C. 848. For the reasons discussed below, respondent's appeal is denied and the law judge's order upholding revocation is affirmed.

First, respondent argues that this revocation action is unconstitutional in that it constitutes a second punishment for his criminal offense, in violation of the Double Jeopardy Clause of the Constitution. However, we have held -- and courts have agreed -- that the Double Jeopardy Clause, which prohibits punishing twice criminally for the same offense, is inapplicable to cases such as this since revocation is a remedial (not punitive) sanction, and these are essentially civil (not criminal) proceedings.<sup>3</sup> More generally, respondent asserts that

(..continued)

(a) A conviction for the violation of any Federal or state statute relating to the growing, processing, manufacture, sale, disposition, possession, transportation, or importation of narcotic drugs, marihuana, or depressant or stimulant drugs is grounds for --

\* \* \*

(2) Suspension or revocation of any certificate or rating issued under this part.

\* \* \*

<sup>3</sup> See Administrator v. Franklin, 3 NTSB 985, 986 (1978), aff'd., Franklin v. FAA, No. 78-3336 (5th Cir. June 12, 1979); Administrator v. Davids, NTSB Order No. EA-3740 at 3 (1992), aff'd., Davids v. FAA, No. 93-70009 slip op. at 3 (9th Cir. September 13, 1993); Administrator v. Byrom, NTSB Order No. EA-3866 at 4 (1993).

section 61.15(a)(2) is unconstitutional because it purports to authorize such actions. It is well established that we have no authority to rule on challenges to the constitutionality of a regulation.<sup>4</sup>

Respondent also claims that this revocation action violates his 1990 plea agreement in the criminal case, in which an Assistant United States Attorney (AUSA) agreed that if "any other federal or state law enforcement agency [should] contemplate placing charges against [respondent] based upon his involvement in . . . criminal acts prior to the date of this agreement the Government will recommend to such agency that no charges be brought against [respondent]." (Administrator's Motion for Summary Judgment, Exhibit C, p. 5.) It is clear from the record, however, that the AUSA fulfilled this agreement when she submitted the following written request to the Administrator's counsel in this case:

Assuming only for the sake of argument that FAA administrative proceedings relating to [respondent's] pilot's license constitute "charges," we request that no charges be brought against [respondent] for his admitted participation in the offenses which resulted in the plea agreement in the above captioned case."

(Administrator's Motion for Summary Judgment, Exhibit C, p. 2.)

There is no legal support for respondent's position that the FAA

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<sup>4</sup> Administrator v. Ewing, 1 NTSB 1192, 1194 (1971) (Board has no authority to pass on reasonableness or validity of FAA regulations); Administrator v. Boardman, NTSB Order No. EA-3523 at 10 (1992) (Board lacks authority to rule on constitutional validity of regulations promulgated by the Administrator). See also Watson v. NTSB, 513 F.2d 1081, 1082 (9th Cir. 1975) (NTSB does not have jurisdiction over challenges to FAA regulations of general application).

was obligated to follow the AUSA's recommendation. We recognized as much in Administrator v. Renner, NTSB Order No. EA-3927 (1993), and Administrator v. Hagan, NTSB Order No. EA-3985 (1993), where we upheld certificate revocations based on felony drug convictions, despite the fact that -- as in this case -- the Department of Justice had recommended, in accordance with the terms of a plea agreement, that the FAA's charges in the revocation actions not be brought.

Respondent next challenges the law judge's denial of his motion in limine, in which he sought to exclude from the record certain documents attached to the Administrator's motion for summary judgment, which respondent asserted were prejudicial and unnecessary. Specifically, respondent objects to the inclusion of the eleven-count criminal indictment (Administrator's Motion for Summary Judgment, Exhibit A), noting that he pled guilty to, and was convicted of, only one count (count 11). The other counts, however, are clearly relevant to respondent's conviction because count 11 specifies that the continuing criminal enterprise headed by respondent involved a series of criminal acts, including those alleged in the previous ten counts, which counts were then "incorporated herein by reference."

Respondent also objects to admission of the entire plea agreement, although he himself introduced -- and sought to rely on -- the text of the sentence quoted above; and to the letter from the AUSA containing the request that no charges be brought, which also contained what was referred to as "background"

information about respondent's criminal case. Respondent apparently believes that the extraneous information contained in these documents is unduly prejudicial. We disagree. Our law judges are certainly capable of recognizing and disregarding irrelevant or potentially prejudicial information. There is no indication that the law judge in this case improperly relied on, or even considered, anything in the challenged documents beyond what was necessary to evaluate the merits of respondent's claim that this enforcement action violated the terms of his plea agreement.

Finally, respondent argues that this case should have been dismissed pursuant to our stale complaint rule (49 C.F.R. 821.33), because it was initiated more than six months after the Administrator first became aware of respondent's conviction. The stale complaint rule does not apply, however, to cases where the allegations in the complaint present a legitimate issue of lack of qualification. Despite respondent's assertions that his criminal offense (importation and distribution of 24,000 pounds of marijuana) is unrelated to aviation safety, and does not implicate a lack of qualification, our case law clearly holds to the contrary. We have held that any conviction involving the sale of drugs, even if it does not involve the use of an aircraft, warrants revocation based on a lack of qualification. Administrator v. Nave, NTSB Order No. EA-4257 (1994), and Administrator v. Robbins, NTSB Order No. EA-4156 (1994), both citing Administrator v. Piro, NTSB Order No. EA-4049 at 4 (1993),

where we said:

In our judgment, any drug conviction establishing or supporting a conclusion that the airman possessed a controlled substance for profit or commercial purposes is a flagrant one warranting revocation under [section 61.15(a)(2)]. An individual who knowingly participates in a criminal drug enterprise for economic gain thereby demonstrates such a disregard for the rights and lives of others that he may reasonably be viewed as lacking the capacity to conform his conduct to the obligations created by rules designed to ensure and promote aviation safety.

In sum, respondent has shown no reason to reverse the law judge's order granting the Administrator's motion for summary judgment in this case.

**ACCORDINGLY, IT IS ORDERED THAT:**

1. Respondent's appeal is denied;
2. The initial decision granting the Administrator's motion for summary judgment and upholding the revocation of respondent's pilot certificate is affirmed; and
3. The revocation of respondent's pilot certificate shall commence 30 days after the service of this opinion and order.<sup>5</sup>

HALL, Chairman, FRANCIS, Vice Chairman, and HAMMERSCHMIDT, Member of the Board, concurred in the above opinion and order.

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<sup>5</sup> For the purpose of this opinion and order, respondent must physically surrender his certificate to an appropriate representative of the FAA pursuant to FAR § 61.19(f).